IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3112 of 1992

For Approval and Signature:
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAUDHARI JAYANTIBHAI SOMABHAI & 2 - Petitioner(s)

Versus

CHAUDHARI MONGHABHAI SOMABHAI & 1 - Respondent(s)

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Appearance :
MS TRUSHA PATEL FOR MR AJ PATEL for Petitioner(s) : 1 - 3.
ABATED for Respondent(s) : 1,
MR YN RAVANI for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI
Date : 08/02/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have challenged an order dated 11-04-1993 passed by the Mamlatdar and ALT, Vijapur as upheld by the order dated 08-01-1985 passed by the Assistant Collector, Mehsana as upheld by the order dated 30-10-1991 passed by Gujarat Revenue Tribunal.

2.The petitioners are the sons of Somabhai Chaudhari. Somabhai Samtabhai had an elder brother by name Monghabhai Samtabhai. In the name of Monghabhai Samtabhai land bearing survey no. 106/2 admeasuring 1 acre and 19 gunthas of village Indupura, Taluka Vijapur District Mehsana was purchased by conditional sale from the land owner i.e. respondent no.2 herein. This transaction took place sometime in the year 1954. Since Monghabhai Samtabhai and Somabhai Samtabhai were real brothers as per their agreed statements revenue entry no. 415 came to be made in the record of the land in question whereby names of both the brothers were entered.

2.1 The respondent no.2 herein instituted a Civil Suit for redemption of mortgage being civil suit no. 49/68. It appears that in the further proceedings, Somabhai Samtabhai raised a dispute that he was cultivating part of the land as a tenant of his brother Monghabhai Samtabhai. The issue was therefore, referred to Tenancy Court for a decision. Accordingly, the proceedings by way of reference reached the Mamlatdar and ALT. After one round of orders passed by the

Revenue Courts, the proceedings were remanded to the Mamlatdar and ALT. In between Somabhai Samtabhai expired. His wife and minor children were brought on record. Before Mamlatdar and ALT, wife of Somabhai Samtabhai namely Santokben gave a deposition on 08-03-1983. She stated before the Mamlatdar that family is not cultivating the land as tenant but by virtue of conditional sale document as part of the family. She stated that on the said survey number, she has no tenancy right as tenant of Monghabhai Samtabhai. Son of the deceased Somabhai Samtabhai namely Rameshbhai also gave deposition before the Mamlatdar on 08-03-1983 in which he only stated that Santokben has already given her statement and he does not wish to add anything to it. The deposition of Monghabhai Samtabhai was also recorded before the Mamlatdar. He also reiterated before the Mamlatdar what was already stated by Santokben. He stated that the land in question was obtained from the land owner Harjibhai Revabhai by registered document dated 06-05-1954 upon payment of Rs.1500/-. According to him this was conditional sale and the mortgage was redeemed within a period of 8 years. He stated that the land is in their possession. Since the land was obtained by the family he and his

brother Somabhai Samtabhai were tilling the land and currently also land is being cultivated jointly. He further stated that if his brother Somabhai Samtabhai claims to be the tenant of the land, the same is not correct. He stated that he and his brother have been cultivating half of the land each. There was no cross examination to the deposition given by Monghabhai Samtabhai before the Mamlatdar.

2.2 On the basis of the above facts, the Mamlatdar passed an order on 11-04-1983. The Mamlatdar concluded that the land was not cultivated by widow of Somabhai Samtabhai as a tenant. The Mamlatdar concluded that the heirs of deceased Somabhai Samtabhai though are cultivating part of the land, such cultivation is not as tenant of Monghabhai Samtabhai.

2.3 The petitioners appealed against the order passed by the Mamlatdar and ALT. The Assistant Collector however, concurred with the view of the Mamlatdar and ALT and rejected the application by order dated 08-01-1985. The revision application filed by the petitioners before Gujarat Revenue Tribunal also came to be rejected by order dated 30-10-1991.

3.The learned advocate Ms. Trusha Patel appearing for the petitioners urged that Revenue Courts erred in relying on the so called admission of Santokben widow of Somabhai Samtabhai. She submitted that such admission cannot form the sole basis for rejecting the claim of the petitioners. She further submitted that Mamlatdar and ALT ought to have appreciated all the aspects of the matter instead of relying on the admission of the witness alone. It was further submitted that Mamlatdar did not given a proper opportunity of being heard to the petitioners. Given a chance, the petitioners would have been in a position to establish that so called admission was not voluntary. It was further contended that factum of the petitioners cultivating the land in question is not in dispute. The original land owners had handed over the possession of the land to Monghabhai Samtabhai who in turn had admitted that the petitioners cultivated half of the said land. She therefore, submitted that when there was partition between the brothers, cultivation of the present petitioners would be as a tenant of the mortgagee and that therefore, the petitioners should be declared as tenant of the suit land. She relied on an unreported

decision of this Court dated 7-8/7/1993 passed by the Learned Single Judge of this Court in Special Civil Application No. 5486/1985 to contend that once two brothers are separated, cultivation of one brother of the land of another brother would not be by a member of the family and that therefore, it is possible to envisage a situation where a brother would be tenant of another brother. For the same purpose, reliance was also placed on the decision of this Court dated 09-12-1976 in Special Civil Application No.435/1972, a copy of which is produced at Annexure-B to the petition.

4. The respondent no.1 i.e. son of Monghabhai Samtabhai having expired during the pendency of the petition and his heirs not having been brought on record, by an order dated 30-07-2004, proceedings are treated to have been abated against the said respondent.

5. The learned advocate Shri Y. N. Ravani appearing for respondent no.2 land owner submitted that Monghabhai Samtabhai had given two statements before the Mamlatdar. In addition to the deposition dated 08-03-1983 noted here-in-above, he had also given

another statement in the year 1981 in which also he had given the same version. He submitted that the Courts below have appreciated the evidence on record and come to correct conclusion and this Court in exercise of power under Article 227 of the Constitution of Indian should not interfere with the concurrent findings of the fact.

6. Having heard the learned advocates for the parties, I find that before Mamlatdar and ALT, there were three statements recorded. Santokben widow of Somabhai Samtabhai had in clear terms stated that she was not cultivating the land as a tenant but as a co-owner. Her son stated that whatever Santokben has stated is sufficient and he does not wish to add anything to it. Monghabhai Samtabhai stated that land in question was taken on conditional sale for an amount of Rs.1500/- and the mortgage was to be redeemed within a period of 8 years. He stated that his brother was cultivating half of the land as a co-owner. He clearly stated that if there is any claim of tenancy made out, same is not correct. This was the sum total of evidence produced before the Mamlatdar. All the submissions point out to the fact that there was no tenancy of Somabhai

Samtabhai and that he was cultivating the land only as a co-sharer. No further evidence of any kind whatsoever was before the Mamlatdar. In that view of the matter, Mamlatdar came to correct conclusion that the tenancy claim of Somabhai Samtabhai and after his death that of his family members raised through his widow Santokben cannot be sustained. The learned advocate for the petitioners vehemently urged that the so called admission on part of Santokben cannot be the sole basis to reject the claim of tenancy. It is true that if there was other reliable unimpeachable evidence on record which would suggest to the contrary, even the admission of Santokben could have been overlooked. In the present case however, there was no evidence at all to establish the tenancy claims of the petitioners. Even if admission of Santokben is kept out of consideration there was nothing on record to establish the tenancy rights of the petitioners. The attempt was made to suggest that the submissions made by Santokben may have not been voluntary. No such assertion has been made in the pleading so far. Neither in the appeal before the Assistant Collector nor in the revision application before the Gujarat Revenue Tribunal nor in the writ petition filed before this Court, such stand

has been taken. Even other-wise as noted above in absence of statement of Santokben also there is no other evidence to establish the claim of the tenancy. Therefore, even if one were to discard the admission of Santokben, the tenancy claims of the petitioners cannot be ascertained.

7. The learned advocate for the petitioner Ms.Trusha Patel had relied on the decision of this Court in the case of Kesaji Ranaji (Decd.) by his heirs & Lrs. Thakor Lilaji Kesaji v. Vallabhdas Parshottamdas Parikh reported in 1996(3) GLR 849 wherein the Learned Single Judge of this Court was pleased to discard the “Nokar-nama” alleged to have been executed between the land owner and the person claiming to be a tenant of the land. This Court had however, noted as many as 16 different factors which convinced the Court that “Nokar-nama” cannot be the sole basis for rejecting the claim of tenancy. The Court found that the land owner had admitted that the father of the petitioner was engaged and was paid remuneration by giving lump-sum produce of the crop grown in the land in question. It was recorded that land owner had sold his agricultural equipments and instruments to the father of the

petitioner for the purpose of cultivation. It was found that the land owner had sold his bullocks and had no bullocks since many years. It was in the background of these facts that this Court had discarded the so called “Nokar-nama” between the parties. In the present case, however, no such contrary evidence is available. Quite apart from the admission of Santokben, there is no other independent proof in support of the tenancy. In that view of the matter, Courts below correctly held that petitioners' cultivated land not as tenant. I see no reason to interfere with these concurrent findings of fact of three Courts below.

8. In view of the above factual conclusions, it is not necessary to go into the question whether real brothers can claim tenancy against another brother and whether the provisions of Bombay Tenancy and Agricultural Lands Act and in particular section 4 thereof would permit such a conclusion.

9. In the result, the petition is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)